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Attorney for Plaintiffs DOE JEWISH USC FACULTY MEMBER 2004 and DOE JEWISH USC STUDENT 1987, Individually And On Behalf Of All Others Similarly Situated

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DOE JEWISH USC FACULTY MEMBER
2004, *et al.*,

Case No. 2:24-cv-05712-FLA (SSCx)

**PLAINTIFFS' OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS
AND STRIKE**

DATE: September 13, 2024
TIME: 1:30 P.M.
CTRM: 6B, Hon. Frenando L. Aenlle-Rocha

UNIVERSITY OF SOUTHERN
CALIFORNIA, *et al.*,

Defendants.

**[EX PARTE APPLICATION FOR LEAVE
TO FILE LATE OPPOSITION PENDING]**

I. **PLAINTIFFS' FIRST AMENDED COMPLAINT ADEQUATELY ALLEGES
INTENTIONAL ACTS OF DISCRIMINATION, ASSAULT, BATTERY AND
BREACH OF CONTRACT AGAINST THE DEFENDANT UNIVERSITY**

The first 13 pages of Defendant’s motion to dismiss (“MTD”) erroneously assert that Plaintiffs’ allegations do not rise to the level of “intent” required under California law to state a cause of action. (“Consistent with their text and legislative purpose, all three statutes [Bane Act, Unruh Act and Ralph Act] capture only *intentional* deprivations of civil rights or *intentional* discrimination”); (“Plaintiffs must plead and prove that USC’s ‘act of interference’ with a civil right was itself ‘deliberate or spiteful’); (“[A]s with the civil rights claims, California law requires

1 a defendant to specifically intend to facilitate an assault or battery by ‘outside agitators’ based on
2 an aiding and abetting theory” (all citations omitted) (Defendant’s MTD at pages 7-13).

3 The gravamen of Plaintiffs’ Complaint in this “local controversy” action (originally filed
4 in the Los Angeles County Superior Court by California citizens and members of the USC Family
5 against California’s UNIVERSITY OF SOUTHERN CALIFORNIA (“Defendant” or “USC”)) is
6 that USC *intentionally and purposely* aided, abetted, encouraged, facilitated and enabled a mob
7 of pro-Hamas terrorist students and outside agitators to take over and operate its campus for
8 weeks on end in late April and May 2024 to intimidate, assault, terrorize, and control access to
9 the Campus and deny free passage for Jewish Students and Jewish Faculty Members. (Plaintiffs’
10 First Amended Complaint (“FAC”) at 2:2-10:10).

12 Plaintiffs allege, among other things, that they were denied passage to their places of
13 study and work unless they disavowed “Zionism” and otherwise complied with demands from
14 what has now fashionably become USC’s “most favored” protestors and protests. Id.

16 The Jewish Faculty Member class representative alleges that he or she was specifically
17 spat on by the terrorist mob, and the FAC generally alleges that “Jewish Students and Jewish
18 Professors and Faculty were spat on by the Campus Terrorists if they dared to cross into the
19 Encampment.” (FAC at 2:25-27). These facts, in conjunction with the specific facts alleging the
20 various means by which USC aided and abetted the Campus Terrorists, including USC’s long-
21 standing policies and procedures, establish the elements needed to constitute a classic case of
22 common law assault and “battery.”

24 The FAC alleges that Defendant not only knew or should have known about the terrorist
25 mob (negligence), but also encouraged and enabled the event and the terrorists with virtually no
26 pushback whatsoever (until donors threatened to pull their donations). (FAC at 2:2-12:31).
27 Indeed, Plaintiffs allege that in some respects USC sponsored the terrorists. In response to
28

1 Plaintiffs' complaints, USC did nothing other than instruct Plaintiffs to work and study at home
2 remotely rather than come to the Campus if they could not handle the heat. Id.

3 The Court must accept as true the allegations in Plaintiffs' FAC if they show a plausible
4 claim for relief. *Bell Atlantic Corp. v. Twombly*, 550 US 544, 556 (2007); *Starr v. Bacca*, 652 F.
5 3d 1202, 1216 (9th Cir. 2011). When a complaint's allegations are capable of more than one
6 inference, the court must adopt whichever plausible inference supports a valid claim. *Starr, supra*
7 at 1216.

8 In this case, the allegations set forth in the FAC all give rise to valid claims against USC
9 under the California BANE Act, Ralph Act, and Unruh Act. (See Judicial Council of California,
10 “Civil Jury Instructions” (“CACI”)) (CACI 3066) (“Bane Act-Essential Factual Elements (Civ.
11 Code 52.1”); (CACI 3067) (“Unruh Civil Rights Act-Damages (Civ. Code 51, 52”); (CACI 3068)
12 (“Ralph Act-Damages and Penalty (Civ. Code 51.7, 52(b).” The incorporated facts directly and
13 indirectly assert intentional conduct and deprivation of Plaintiffs’ civil rights under these state law
14 statutes.

15 The allegations in the FAC also assert valid common law claims sounding in breach of
16 contract,” “negligence,” “assault” and “battery.” (See CACI 303) (“Breach of Contract-Essential
17 Factual Elements”), (CACI 400) (“Negligence-Essential Factual Elements”), (CACI 1300)
18 (Battery-Essential Factual Elements) and (CACI 1301 (“Assault-Essential Factual Elements”).

19 In this case, Plaintiffs have alleged the specific facts set forth in paragraphs 1-31 of the
20 FAC into the referenced causes of action and in particular, the factual elements of proof needed to
21 establish each claim. This is confirmed by the applicable jury instructions referenced herein.

22 Thus, Plaintiffs and those similarly situated have alleged claims sufficient to entitle them
23 to recover nominal damages and more importantly injunctive relief for the damages and harm
24 caused by Defendant’s conduct, action and inaction with respect to each of the statutes that
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1 Plaintiffs allege Defendant has violated.

2 Moreover, Plaintiffs' class representatives are adequate to serve the putative class and
3 there is no reason at this early pleading stage to strike the class allegations.

4 Accordingly, the Court should deny Defendant's motions to dismiss and strike in their
5 entirety.

6 **II. IF THE COURT CONLCUDES THAT USC'S DEFENSES RE FAILURE TO**
7 **PLEAD THE REQUISITE INTENT HAVE ANY MERIT, THE COURT SHOULD**
8 **GRANT PLAINTIFFS LEAVE TO ALLEGE THE REQUISITE INTENT**

9 Contrary to the assertions of Defendant, Plaintiffs have clearly alleged direct facts and
10 indirect facts and circumstances under which this Court can reasonably infer intentional
11 deprivations of civil rights or intentional discrimination by USC and its Trustees.

12 For example, Plaintiffs allege that some of the outside agitators and guest professors
13 causing the harm complained of by Plaintiffs were invited by USC to speak or teach at the USC
14 campus with USC'S knowledge that just inviting them to speak or teach would foment the very
15 kind of protests that gave rise to the encampments and discrimination at issue. Id.

16 Plaintiffs respectfully submit that USC's encouragement and appeasement of pro-Hamas
17 and Jew-hating encampments of terrorists, and knowingly allowing encampments comprised of
18 Jew-hating students and outside agitators to exist and flourish for weeks on end during the school
19 year in the middle of USC's "town square"- is in and of itself an intentional act of defiance
20 against all Jewish citizens and in particular, Jewish students and faculty members.

21 Thus, Plaintiffs have alleged facts and circumstances that show and demonstrate that
22 Defendant and its trustees favor mob rule at the expense of Jewish Faculty Members and
23 Students. This conduct constitutes "intentional" discrimination. USC's "tolerance" of mob rule
24 is an intentional deprivation the civil rights of any Jewish Student or Jewish Faculty Member who
25 does not feel he or she needs to tolerate it. Jews who pay to study and gain a degree from USC
26

1 and faculty members who happen to be Jewish should not be forced to remain in their offices or
2 dorm rooms because they do not want, need or require daily reminders from terrorist mobs
3 wearing traditional Khalifah and other masks to cover their true identities that Defendant's
4 trustees are condoning and encouraging encampments created by Hamas supporting terrorist
5 mobs who want to wipe Israel and all Jews off the face of the Earth.
6

7 To the extent that this Court agrees with Defendant and views that Plaintiffs' statutory
8 discrimination and assault and battery claims do not plead the requisite intent, Plaintiffs should be
9 allowed leave to amend to allege the intent that the Court finds wanting. See *Lillard v. Shelby*
10 *County Board of Ed.*, 76 F. 3d 716, 724 (6th Cir. 1996) (motions to dismiss civil rights complaints
11 should be "scrutinized with special care").
12

13 DATED: September 9, 2024

14 LAW OFFICES OF MICHAEL E. REZNICK
15 A Professional Corporation

16 By: /s/Bryan Christopher Castaneda
17 Bryan Christopher Castaneda

18 Attorney for Plaintiffs DOE JEWISH USC
19 FACULTY MEMBER 2004 and DOE JEWISH
USC STUDENT 1987, Individually And On Behalf
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CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2024, I served the following documents by and through the CM/ECF system all parties of record to this action and interested parties who are registered CM/ECF users, or have registered for electronic notice, or have consented in writing to electronic service, and that service will be accomplished through the CM/ECF system:

PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION TO DISMISS AND STRIKE

I declare under penalty of perjury under the laws of the State of California and United States of America that the foregoing is true and correct.

Executed on September 9, 2024 at Oak Park, California.

By: /s/Bryan Christopher Castaneda
Bryan Christopher Castaneda